

AMENDED IN SENATE APRIL 10, 2003

SENATE BILL

No. 288

Introduced by Senator Sher

February 19, 2003

~~An act to repeal Section 39609 of the Health and Safety Code, An act to add Chapter 4.5 (commencing with Section 42500) to Part 4 of Division 26 of the Health and Safety Code, relating to air quality.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 288, as amended, Sher. Air quality: ~~emission control measures~~ New Source Review Restoration Act of 2003.

(1) Existing law, the federal Clean Air Act, requires each major new and modified source of air pollution to undergo "new source review" to ensure that facilities install the best available control equipment, obtain offsets for any new emissions, and comply with any other requirement to ensure that the new and modified sources do not adversely affect air quality. On December 31, 2002, federal regulations implementing the new source review program were adopted that alter that program. Under the federal Clean Air Act, states may adopt air pollution control requirements that are more stringent than federal requirements. Existing law designates the State Air Resources Board as the air pollution control agency responsible for the coordination of the activities of air pollution control districts and air quality management districts for the purposes of the federal Clean Air Act. Subject to the powers of the state board, the districts are required to adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards in all areas affected by nonvehicular emission sources under their jurisdiction. Each district is authorized to establish a permit system that requires, except as specified, that before

any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance that may cause the issuance of air contaminants, the person obtain a permit from the air pollution control officer of the district.

This bill would establish the New Source Review Restoration Act of 2003. The bill would require the state board to adopt regulations that incorporate all federal guidance documents and regulations implementing the federal new source review program as it existed on December 30, 2002. The bill would also require the state board to adopt regulations that incorporate and implement specified provisions of the Code of Federal Regulations pertaining to new source review, as they existed on December 30, 2002. The bill would provide that its provisions, and all regulations adopted pursuant to its provisions, apply retroactively to December 30, 2002. The bill would require the state board, within 90 days after the effective date of this act, to incorporate into the California Code of Regulations the list of categories of stationary sources adopted by the administrator of the Environmental Protection Agency pursuant to federal law, and within one year after the effective date of the bill, incorporate by reference into the California Code of Regulations all regulations adopted by the Administrator of the Environmental Protection Agency that establish standards of performances for new sources. The bill would require these incorporated federal standards to remain in effect until the state board, following public notice and comment, adopts new performance standards. The bill would require the state board to review these new performance standards at least every 8 years. The bill would authorize each district to develop and submit to the state board a procedure for implementing and enforcing standards of performance for new sources located within the jurisdiction of the district. The bill would also require the state board to prescribe regulations that establish a procedure similar to that provided in existing federal law under which each district is required to submit a plan to the state board that establishes standards for performance for any existing source for any air pollutant for which air quality criteria have not been issued but to which a standard of performance would apply if the existing source were a new source, and that provides for the implementation and enforcement of those standards of performance. The bill would authorize the state board to prescribe a plan for a district if the state board determines the district plan to be unsatisfactory, and authorizes the state board to enforce the provisions of that plan if the district fails to do so.



The bill would authorize any person who proposes to own or operate a new source to request a district for one or more waivers from the requirements of these provisions with respect to any air pollutant in order to encourage the use of an innovative technological system of continuous emission reduction, and would authorize the district to grant a waiver if, after public notice and comment, it determines the proposed system meets specified criteria.

The bill would require the state implementation plan for the federal act to contain emission limitations and other measures that the state board determines may be necessary to prevent significant deterioration of air quality in each region designated as attainment or unclassifiable pursuant to federal law. The bill would require that in the case of sulfur dioxide and particulate matter, each applicable implementation plan contain measures assuring that maximum allowable increases over baseline concentrations and maximum allowable concentrations of the pollutant not be exceeded. The bill would specify the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of the pollutant for class I, class II, and class III areas, as defined.

The bill would prohibit construction on a major emitting facility unless a permit has been issued that meets specified requirements, including that the permit has been reviewed under the provisions of the bill, interested parties have had the opportunity to comment, and the owner or operator of the facility demonstrates that emission from construction or operation of the facility will not cause, or contribute to, air pollution in excess of specified concentrations and standards. The bill would prohibit the issuance of a permit if the Federal Land Manager or other federal official provides specified findings to the state board relating to the adverse impact of the facility on air quality. The bill would require the state board to adopt regulations at least as stringent as those adopted by the Administrator of the federal Environmental Protection Agency, that were in effect on December 30, 2002, to prevent the significant deterioration of air quality which would result from the emissions of hydrocarbons, carbon monoxide, photochemical oxidants, and nitrogen oxides. The bill would require the state board or the district with jurisdiction to take those measures necessary to prevent the construction or modification of a major emitting facility, as defined, that does not conform to the provisions of the bill.

The bill would establish plan requirements for nonattainment areas, as defined and would require the provisions of the plan to include



providing for the implementation of all reasonably available control measures as expeditiously as practicable, attainment of the national primary ambient air quality standards, inventories of actual emissions, and enforceable emissions limitations. The bill would also require the plan provisions to require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area.

The bill would authorize the issuance of permits to construct and operate if the permitting agency makes certain determinations pertaining to emissions of pollutants resulting from the new or modified source. The bill would provide that the owner or operator of a new or modified major stationary source may comply with any offset requirement under this act for increased emissions of any air pollutant only by obtaining emission reductions of the air pollutant from the same source or other sources in the same nonattainment area, but would authorize the owner or operator to obtain offsets from another nonattainment area if the other area has an equal or higher nonattainment classification, and the emissions in the other area contribute to violations of the national ambient air quality standard.

The bill would set forth, for any area designated as a nonattainment area for national ambient air quality standards, specified offset requirements. The bill would set forth the requirements for commencing a civil action to enforce an emission standard or limitation, as defined, to order the state board or a district to perform an act under the provisions of this act.

(2) Existing law makes a violation of any rule, regulation, permit, or order of the state board and a district a misdemeanor. By expanding the scope of a crime, this bill would impose a state-mandated local program. To the extent this bill would establish duties for districts it would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires the State Air Resources Board, on or before December 31, 1989, and at least every 3 years thereafter, to complete a study on the feasibility of employing air quality models and other analytical techniques to distinguish between emission control measures~~

on the basis of their relative ambient air quality impact. Existing law requires the state board to consult with districts and affected groups in conducting the study, and, after a public hearing, to prepare and transmit its findings to each air quality management district and air pollution control district for its use in developing a plan to attain state ambient air quality standards.

~~This bill would repeal that requirement.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 39609 of the Health and Safety Code is~~
2 ~~repealed.~~

3 *SECTION 1. Chapter 4.5 (commencing with Section 42500)*
4 *is added to Part 4 of Division 26 of the Health and Safety Code,*
5 *to read:*

6
7 *CHAPTER 4.5. NEW SOURCE REVIEW RESTORATION ACT OF 2003*

8
9 *42500. This article shall be known, and may be cited, as the*
10 *New Source Review Restoration Act of 2003.*

11 *42501. The Legislature finds and declares all of the following:*

12 *(a) The people of the State of California have a primary interest*
13 *in safeguarding the air quality in the state from degradation and*
14 *in ensuring the enhancement of the air quality of the state. For over*
15 *25 years, the federal Clean Air Act (42 U.S.C. Sec. 7401, et seq.),*
16 *has required major new and modified sources of air pollution to*
17 *undergo "new source review," to ensure that those facilities install*
18 *the best available control equipment, obtain offsets for any new*
19 *emissions, and comply with other requirements to ensure that such*
20 *new and modified sources do not adversely affect air quality.*

21 *(b) New source review has been a cornerstone of state efforts*
22 *to reduce pollution from older industrial sources by requiring*
23 *facilities to install the best available control technology when they*
24 *undergo major modifications.*

25 *(c) On December 31, 2002, the President of the United States*
26 *promulgated regulations that substantially alters the federal*
27 *program of new source review (67 Fed. Reg. 80186-80289 (Dec.*
28 *31, 2002)).*

1 (d) *These new regulations threaten to undermine the air quality*
2 *of the State of California and thereby threaten the health and safety*
3 *of the people of the State of California.*

4 (e) *Section 7416 of Title 42 of the United States Code,*
5 *contained in the federal Clean Air Act, protects the right of states*
6 *to adopt air pollution control requirements that are more stringent*
7 *than federal requirements. Moreover, the proposed regulations*
8 *provide that the states may adopt permitting programs that are “at*
9 *least as stringent” as the new federal “revised base program” (67*
10 *Fed. Reg. 80241).*

11 (f) *The intent of this chapter is to adopt into state law the federal*
12 *new source review program as it existed on December 30, 2002.*

13 (g) *The program set forth in this chapter imposes more*
14 *stringent standards than the new federal “revised base program”*
15 *set forth in 67 Fed. Reg. 80186-80289.*

16 42502. *The purposes of this chapter are all of the following:*

17 (a) (1) *To protect the public health and welfare from any actual*
18 *or potential adverse effect which in the judgement of the state*
19 *board or local district may reasonably be anticipated to occur from*
20 *air pollution or from exposures to pollutants in other media, which*
21 *pollutants originate as emissions to the ambient air,*
22 *notwithstanding attainment and maintenance of all national*
23 *ambient air quality standards.*

24 (2) *To preserve, protect, and enhance the air quality in national*
25 *parks, national wilderness areas, national monuments, national*
26 *seashores, and other areas of special national or regional natural,*
27 *recreational, scenic, or historic value.*

28 (3) *To ensure that economic growth will occur in a manner*
29 *consistent with the preservation of existing clean air resources.*

30 (4) *To ensure that emissions from any source in the state will not*
31 *interfere with any portion of the applicable implementation plan*
32 *to prevent significant deterioration of air quality for any other*
33 *state.*

34 (5) *To ensure that any decision to permit increased air pollution*
35 *in any area to which this chapter applies is made only after careful*
36 *evaluation of all the consequences of that decision and after*
37 *adequate procedural opportunities for informed public*
38 *participation in the decisionmaking process.*

1 42503. (a) *The state board shall adopt regulations that*
2 *incorporate and implement the following provisions of the Code of*
3 *Federal Regulations, as they existed on December 30, 2002:*

4 (1) *Section 51.160 of Title 40 of the Code of Federal*
5 *Regulations.*

6 (2) *Section 11.2.3.2 of Appendix W of Part 51 of Title 40 of the*
7 *Code of Federal Regulations.*

8 (3) *Section 11.2.3.3. of Appendix W of Part 51 of Title 40 of the*
9 *Code of Federal Regulations.*

10 (4) *Appendix S of Part 51 of Title 40 of the Code of Federal*
11 *Regulations.*

12 (5) *Section 51.161 of Title 40 of the Code of Federal*
13 *Regulations.*

14 (6) *Section 51.162 of Title 40 of the Code of Federal*
15 *Regulations.*

16 (7) *Section 51.163 of Title 40 of the Code of Federal*
17 *Regulations.*

18 (8) *Section 51.164 of Title 40 of the Code of Federal*
19 *Regulations.*

20 (9) *Section 51.165 of Title 40 of the Code of Federal*
21 *Regulations.*

22 (10) *Section 51.166 of Title 40 of the Code of Federal*
23 *Regulations.*

24 (11) *Section 52.21 of Title 40 of the Code of Federal*
25 *Regulations.*

26 (12) *Section 52.24 of Title 40 of the Code of Federal*
27 *Regulations.*

28 (13) *Section 60.2 of Title 40 of the Code of Federal*
29 *Regulations.*

30 (14) *Section 60.14 of Title 40 of the Code of Federal*
31 *Regulations.*

32 (15) *Section 60.15 of Title 40 of the Code of Federal*
33 *Regulations.*

34 (b) *The Legislature finds and declares that the federal*
35 *provisions set forth in subdivision (a) have, for the most part,*
36 *already been implemented by the state board pursuant to federal*
37 *law as it existed on December 30, 2002.*

38 42504. (a) *This chapter, and all regulations adopted*
39 *pursuant to this chapter, shall apply retroactively to December 30,*
40 *2002.*

1 (b) Unless otherwise specified, all references to sections of the
2 United States Code are to those sections as they existed on
3 December 30, 2002.

4 42505. For purposes of this chapter, the following definitions
5 apply:

6 (a) “Administrator” means the administrator of the United
7 States Environment Protection Agency.

8 (b) “District” means an air pollution control district or air
9 quality management district.

10 (c) “Existing source” means any stationary source other than
11 a new source.

12 (d) “Modification” means any physical change in, or change
13 in the method of operation of, a stationary source that increases the
14 amount of any air pollutant emitted by that source, or which results
15 in the emission of any air pollutant not previously emitted. A
16 conversion to coal under either of the following circumstances is
17 not a modification for purposes of this subdivision or subdivision
18 (d):

19 (1) As a result of an order pursuant to Section 2(a) of the Energy
20 Supply and Environmental Coordination Act of 1974 (15 U.S.C.
21 Secs. 791, 792(a)), or any amendment thereto, or any subsequent
22 enactment which supersedes that act.

23 (2) That qualifies under Section 7413(d)(5)(A) of Title 42 of the
24 United States Code.

25 (e) “New source” means any stationary source, the
26 construction or modification of which is commenced after the
27 publication of regulations or proposed regulations pursuant to this
28 chapter that prescribes a standard of performance that is
29 applicable to that source.

30 (f) “Owner” or “operator” means any person who owns,
31 leases, operates, controls, or supervises a stationary source.

32 (g) “Standard of performance” or “performance standard”
33 means a standard for emissions of air pollutants that reflects the
34 degree of emission limitation achievable through the application
35 of the best system of emission reduction which, taking into account
36 the cost of achieving that reduction and any nonair quality health
37 and environmental impact and energy requirements, the state
38 board determines has been adequately demonstrated, and that is
39 at least as stringent as those promulgated by the administrator of
40 the United States Environmental Protection Agency

1 (administrator) pursuant to Section 7411 of Title 42 of the United
2 States Code.

3 (h) "State board" means the State Air Resources Board.

4 (i) "Stationary source" means any building, structure, facility,
5 or installation that emits or may emit any air pollutant.

6 (j) "Technological system of continuous emission reduction"
7 means either of the following:

8 (1) A technological process for production or operation by any
9 source which is inherently low-polluting or nonpolluting.

10 (2) A technological system for continuous reduction of the
11 pollution generated by a source before that pollution is emitted
12 into the ambient air, including precombustion cleaning or
13 treatment of fuels.

14 42507. Nothing in this chapter prohibits the state or any
15 political subdivision thereof to adopt or enforce any standard or
16 limitation respecting emissions of air pollutants or any
17 requirement respecting control or abatement of air pollution,
18 except that if an emission standard or limitation is in effect under
19 this chapter, such state or political subdivision may not adopt or
20 enforce any emission standard or limitation which is less stringent
21 than the standard or limitation under this chapter.

22 42508. The state implementation plan shall contain emission
23 limitations and other measures that the state board determines
24 may be necessary to prevent significant deterioration of air quality
25 in each region or portion thereof designated pursuant to Section
26 7407 of Title 42 of the United States Code as attainment or
27 unclassifiable.

28 42509. All areas in the state shall be designated according to
29 this section:

30 (a) All international parks, national wilderness or memorial
31 parks that exceed 5,000 acres in size, and all national parks that
32 exceed 6,000 acres in size, which were in existence as of August 7,
33 1977, shall be designated as class I, and may not be redesignated.
34 All areas which were redesignated as class I under federal
35 regulations adopted before August 7, 1977, shall be class I areas
36 which may be redesignated as provided in this chapter.

37 (b) All areas in the state designated pursuant to Section
38 7407(d) of Title 42 of the United States Code as attainment or
39 unclassifiable which are not established as class I shall be class II
40 areas.

1 42510. (a) In the case of sulfur dioxide and particulate
2 matter, each applicable implementation plan shall contain
3 measures assuring that maximum allowable increases over
4 baseline concentrations and maximum allowable concentrations
5 of the pollutant shall not be exceeded. In the case of any maximum
6 allowable increase (except an allowable increase specified under
7 Section 7475(d)(2)(C)(iv) of Title 42 of the United States Code for
8 a pollutant based on concentrations permitted under national
9 ambient air quality standards for any period other than an annual
10 period, the regulations shall permit maximum allowable increase
11 to be exceeded during one period per year.

12 (b) For any class I area, the maximum allowable increase in
13 concentrations of sulfur dioxide and particulate matter over the
14 baseline concentration of the pollutants shall not exceed the
15 following amounts:

16 (1) For particulate matter, five micrograms per cubic meter as
17 an annual geometric mean and 10 micrograms per cubic meter as
18 a 24-hour maximum.

19 (2) For sulfur dioxide, two micrograms per cubic meter as an
20 annual arithmetic mean, five micrograms per cubic meter as a
21 24-hour maximum, and 25 micrograms per cubic meter as a
22 three-hour maximum.

23 (c) For any class II area, the maximum allowable increase in
24 concentrations of sulfur dioxide and particulate matter over the
25 baseline concentration of the pollutants shall not exceed the
26 following amounts:

27 (1) For particulate matter, 19 micrograms per cubic meter as
28 an annual geometric mean and 37 micrograms per cubic meter as
29 a 24-hour maximum.

30 (2) For sulfur dioxide, 20 micrograms per cubic meter as an
31 annual arithmetic mean, 91 micrograms per cubic meter as a
32 24-hour maximum, and 512 micrograms per cubic meter as a
33 three-hour maximum.

34 (d) For any class III area, the maximum allowable increase in
35 concentrations of sulfur dioxide and particulate matter over the
36 baseline concentration of the pollutants shall not exceed the
37 following amounts:

38 (1) For particulate matter, 37 micrograms per cubic meter an
39 annual geometric mean, and 75 micrograms per cubic meter as a
40 24-hour maximum.

1 (2) *For sulfur dioxide, 40 micrograms per cubic meter as an*
2 *annual geometric mean, 182 micrograms per cubic meter as a*
3 *24-hour maximum, and 700 micrograms per cubic meter as a*
4 *three-hour maximum.*

5 (e) *The maximum allowable concentration of any air pollutant*
6 *in any area to which this chapter applies shall not exceed a*
7 *concentration for the pollutant for each period of exposure equal*
8 *to whichever concentration is lowest for the pollutant for the*
9 *period of exposure:*

10 (1) *The concentration permitted under the national secondary*
11 *ambient air quality standard.*

12 (2) *The concentration permitted under the national primary*
13 *ambient air quality standard.*

14 (f) *The state board may, after notice and opportunity for public*
15 *hearing, issue orders or adopt rules providing that for purposes of*
16 *determining compliance with the maximum allowable increases in*
17 *ambient concentrations of an air pollutant, the following*
18 *concentrations of the pollutant shall not be taken into account:*

19 (1) *Concentrations of the pollutant attributable to the increase*
20 *in emissions from stationary sources which have converted from*
21 *the use of petroleum products, or natural gas, or both, by reason*
22 *of an order which is in effect under subsections (a) and (b) of*
23 *Section 792 of the of Title 15 of the Unites States Code, or any*
24 *subsequent legislation which supersedes those provisions, over the*
25 *emissions from those sources before the effective date of the order.*

26 (2) *The concentrations of the pollutant attributable to the*
27 *increase in emissions from stationary sources which have*
28 *converted from using natural gas by reason of a natural gas*
29 *curtailment pursuant to a natural gas curtailment plan in effect*
30 *pursuant to the Federal Power Act (16 U.S.C. Sec. 791a et seq.)*
31 *over the emissions from those sources before the effective date of*
32 *the plan.*

33 (3) *Concentrations of particulate matter attributable to the*
34 *increase in emissions from construction or other temporary*
35 *emission-related activities.*

36 (4) *The increase in concentrations attributable to new sources*
37 *outside the United States over the concentrations attributable to*
38 *existing sources which are included in the baseline concentration*
39 *determined in accordance with Section 7479(4) of Title 42 of the*
40 *United States Code.*

(g) No action taken with respect to a source under paragraph (1) or (2) of subdivision (f) shall apply more than five years after the effective date of the order referred to in paragraph (1) of subdivision (f) or the plan referred to in paragraph (2) of subdivision (f), whichever is applicable. If both orders and plans are applicable, no action shall apply more than five years after the later of the effective dates.

42511. (a) No major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this chapter applies unless all of the following occurs:

(1) A permit has been issued for the proposed facility in accordance with this chapter setting forth emission limitations for the facility which conform to the requirements of this chapter.

(2) The proposed permit has been subject to a review in accordance with this section, the required analysis has been conducted in accordance with regulations adopted by the state board, and a public hearing has been held with opportunity for interested parties, including representatives of the state board, to appear and submit written or oral presentations on the air quality impact of the source, alternatives thereto, control technology requirements, and other appropriate considerations.

(3) The owner or operator of the facility demonstrates, as required pursuant to Section 7410(j) of Title 42 of the United States Code, that emissions from construction or operation of the facility will not cause, or contribute to, air pollution in excess of any of the following:

(A) The maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this chapter applies more than one time per year.

(B) The national ambient air quality standard in any air quality control region.

(C) Any other applicable emission standard or standard of performance under this chapter.

(4) The proposed facility is subject to the best available control technology for each pollutant subject to regulation under this chapter emitted from, or which results from, the facility.

(5) There has been an analysis of any air quality impacts projected for the area as a result of growth associated with the facility.

(6) *The person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this chapter agrees to conduct monitoring as may be necessary to determine the effect which emissions from any facility may have, or is having, on air quality in any area which may be affected by emissions from a source.*

(7) *In the case of a source which proposes to construct in a class III area, emissions from which would cause or contribute to exceeding the maximum allowable increments applicable in a class II area and where no standard under Section 7411 of Title 42 of the United States Code has been promulgated subsequent to August 7, 1977, for the source category, the state board has approved the determination of best available technology, as set forth in the permit.*

(b) *The demonstration pertaining to maximum allowable increases required under paragraph (3) of subdivision (a) shall not apply to maximum allowable increases for class II areas in the case of an expansion or modification of a major emitting facility which is in existence on August 7, 1977, whose allowable emissions of air pollutants, after compliance with paragraph (4) of subdivision (a), shall be less than 50 tons per year and for which the owner or operator of the facility demonstrates that emissions of particulate matter and sulfur oxides will not cause or contribute to ambient air quality levels in excess of the national secondary ambient air quality standard for either of the pollutants.*

(c) *Any completed permit application for a major emitting facility in any area to which this chapter applies shall be granted or denied not later than one year after the date of filing of the completed application.*

(d) *In any case where a federal official charged with direct responsibility for management of any lands within a class I area or the Federal Land Manager of the lands, the administrator, or the Governor of an adjacent state containing such a class I area files a notice with the state board alleging that emissions from a proposed major emitting facility may cause or contribute to a change in the air quality in the area and identifying the potential adverse impact of the change, a permit shall not be issued unless the owner or operator of the facility demonstrates to the state board that emissions of particulate matter and sulfur dioxide will*

1 *not cause or contribute to concentrations which exceed the*
2 *maximum allowable increases for a class I area.*

3 *(e) In any case where the Federal Land Manager demonstrates*
4 *to the satisfaction of the state board that the emissions from the*
5 *facility will have an adverse impact on the air quality-related*
6 *values (including visibility) of the lands, notwithstanding the fact*
7 *that the change in air quality resulting from emissions from the*
8 *facility will not cause or contribute to concentrations which exceed*
9 *the maximum allowable increases for a class I area, a permit shall*
10 *not be issued.*

11 *(f) In any case where the owner or operator of the facility*
12 *demonstrates to the satisfaction of the Federal Land Manager, and*
13 *the Federal Land Manager makes the appropriate certification,*
14 *that the emissions from the facility will have no adverse impact on*
15 *the air quality-related values of the lands (including visibility),*
16 *notwithstanding the fact that the change in air quality resulting*
17 *from emissions from the facility will cause or contribute to*
18 *concentrations which exceed the maximum allowable increases*
19 *for class I areas, the state board may issue a permit.*

20 *(g) In the case of a permit issued pursuant to subdivision (f), the*
21 *facility shall comply with the emission limitations under the permit*
22 *as may be necessary to assure that emissions of sulfur oxides and*
23 *particulates from the facility will not cause or contribute to*
24 *concentrations of the pollutant which exceed the following*
25 *maximum allowable increases over the baseline concentration for*
26 *such pollutants:*

27 *(1) For particulate matter, 19 micrograms per cubic meter as*
28 *an annual geometric mean, and 37 micrograms per cubic meter as*
29 *a 24-hour maximum.*

30 *(2) For sulfur dioxide, 20 micrograms per cubic meter as an*
31 *annual arithmetic mean, 91 micrograms per cubic meter as a*
32 *24-hour maximum, and 325 micrograms per cubic meter as a three*
33 *hour maximum.*

34 *(h) (1) In any case where the owner or operator of a proposed*
35 *major emitting facility who has been denied a certification under*
36 *subdivision (f) demonstrates to the satisfaction of the state board,*
37 *after notice and public hearing, and the state board finds, that the*
38 *facility cannot be constructed by reason of any maximum*
39 *allowable increase for sulfur dioxide for periods of 24-hours or*
40 *less applicable to any class I area and, in the case of federal*

mandatory class I areas, that a variance under this clause will not adversely affect the air quality related values of the area (including visibility), the state board, after consideration of the Federal Land Manager's recommendation, if any, and subject to his or her concurrence, may grant a variance from the maximum allowable increase. If a variance is granted, a permit may be issued to the source pursuant to the requirements of this subdivision.

(2) In any case in which the state board recommends a variance under this subdivision in which the Federal Land Manager does not concur, the recommendations of the state board and the Federal Land Manager may be transmitted to the President of the United States. The variance shall take effect if the President of the United States approves the state board's recommendations.

(3) In the case of a permit issued pursuant to this subdivision, the facility shall comply with the emission limitations under the permit as may be necessary to assure that emissions of sulfur oxides from the facility shall not, during any day on which the otherwise applicable maximum allowable increases are exceeded, cause or contribute to concentrations which exceed the following maximum allowable increases for the areas over the baseline concentration for the pollutant and to assure that the emissions shall not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less on more than 18 days during any annual period:

(In micrograms per cubic meter)

Period of exposure	Low terrain areas	High terrain areas
24-hr maximum	36	62
3-hr maximum	130	221

(4) For purposes of paragraph (3), the term "high terrain area" means with respect to any facility, any area having an elevation of 900 feet or more above the base of the stack of the facility, and the term "low terrain area" means any area other than a high terrain area.

(i) (1) The review provided for in subdivision (a) shall be preceded by an analysis in accordance with regulations of the state board, adopted under this subdivision, which may be conducted by the state board, any local district, or by the major emitting facility

1 *applying for the permit, of the ambient air quality at the proposed*
2 *site and in areas which may be affected by emissions from the*
3 *facility for each pollutant subject to regulation under this chapter*
4 *that will be emitted from the facility.*

5 *(2) The analysis required by this subdivision shall include*
6 *continuous air quality monitoring data gathered for purposes of*
7 *determining whether emissions from the facility will exceed the*
8 *maximum allowable increases or the maximum allowable*
9 *concentration permitted under this chapter. This data shall be*
10 *gathered over a period of one calendar year preceding the date of*
11 *application for a permit under this chapter unless the state*
12 *determines that a complete and adequate analysis for these*
13 *purposes may be accomplished in a shorter period. The results of*
14 *the analysis shall be available at the time of the public hearing on*
15 *the application for the permit.*

16 *42512. In the case of the pollutants hydrocarbons, carbon*
17 *monoxide, photochemical oxidants, and nitrogen oxides, the state*
18 *board shall adopt regulations at least as stringent as those adopted*
19 *by the administrator, as in effect on December 30, 2002, to prevent*
20 *the significant deterioration of air quality which would result from*
21 *the emissions of those pollutants.*

22 *42513. The state board or the district with jurisdiction shall*
23 *take measures, including issuance of an order, or seeking*
24 *injunctive relief, as necessary to prevent the construction or*
25 *modification of a major emitting facility that does not conform to*
26 *the requirements of this chapter, or that is proposed to be*
27 *constructed in any area designated pursuant to Section 7407(d) of*
28 *Title 42 of the United States Code as attainment or unclassifiable*
29 *and that is not subject to an implementation plan that meets the*
30 *requirements of this chapter.*

31 *42514. For purposes of this chapter, the following definitions*
32 *apply:*

33 *(a) "Major emitting facility" means any of the following*
34 *stationary sources of air pollutants which emit, or have the*
35 *potential to emit, 100 tons per year or more of any air pollutant*
36 *from the following types of stationary sources: fossil-fuel fired*
37 *steam electric plants of more than 250,000,000 British thermal*
38 *units per hour heat input, coal cleaning plants (thermal dryers),*
39 *kraft pulp mills, Portland Cement plants, primary zinc smelters,*
40 *iron and steel mill plants, primary aluminum ore reduction plants,*

1 *primary copper smelters, municipal incinerators capable of*
 2 *charging more than 50 tons of refuse per day, hydrofluoric,*
 3 *sulfuric, and nitric acid plants, petroleum refineries, lime plants,*
 4 *phosphate rock processing plants, coke oven batteries, sulfur*
 5 *recovery plants, carbon black plants (furnace process), primary*
 6 *lead smelters, fuel conversion plants, sintering plants, secondary*
 7 *metal production facilities, chemical process plants, fossil-fuel*
 8 *boilers of more than 250,000,000 British thermal units per hour*
 9 *heat input, petroleum storage and transfer facilities with a*
 10 *capacity exceeding 300,000 barrels, taconite ore processing*
 11 *facilities, glass fiber processing plants, and charcoal production*
 12 *facilities. The term also includes any other source with the*
 13 *potential to emit 250 tons per year or more of any air pollutant. The*
 14 *term shall not include new or modified facilities which are*
 15 *nonprofit health or education institutions which have been*
 16 *exempted by the state.*

17 (b) “Commenced” as applied to construction of a major
 18 emitting facility means that the owner or operator has obtained all
 19 necessary preconstruction approvals or permits required by
 20 federal, state, or local air pollution emissions and air quality laws
 21 or regulations and has done either of the following:

22 (1) Begun, or caused to begin, a continuous program of
 23 physical onsite construction of the facility.

24 (2) Entered into binding agreements or contractual
 25 obligations, which cannot be canceled or modified without
 26 substantial loss to the owner or operator, to undertake a program
 27 of construction of the facility to be completed within a reasonable
 28 time.

29 (c) “Necessary preconstruction approvals or permits” means
 30 those permits or approvals, required by the permitting authority as
 31 a precondition to undertaking any activity under paragraph (1) or
 32 (2) of subdivision (b).

33 (d) “Construction” when used in connection with any source
 34 or facility, includes the modification, as defined in Section 7411(a)
 35 of the United States Code, of any source or facility.

36 (e) “Best available control technology” means an emission
 37 limitation based on the maximum degree of reduction of each
 38 pollutant subject to regulation under this chapter emitted from or
 39 which results from any major emitting facility, which the
 40 permitting authority, on a case-by-case basis, taking into account

1 energy, environmental, and economic impacts and other costs,
2 determines is achievable for the facility through application of
3 production processes and available methods, systems, and
4 techniques, including fuel cleaning, clean fuels, or treatment or
5 innovative fuel combustion techniques for control of each
6 pollutant. In no event shall application of “best available control
7 technology” result in emissions of any pollutants which will
8 exceed the emissions allowed by any applicable standard
9 established pursuant to Section 7411 or Section 7412 of Title 42 of
10 the United States Code. Emissions from any source utilizing clean
11 fuels, or any other means, to comply with this subdivision shall not
12 be allowed to increase above levels that would have been required
13 under this subdivision as it existed in federal law prior to
14 November 15, 1990.

15 (f) “Baseline concentration” means, with respect to a
16 pollutant, the ambient concentration levels which exist at the time
17 of the first application for a permit in an area subject to this
18 chapter, based on air quality data available in the federal
19 Environmental Protection Agency or a state board and on
20 monitoring data as the permit applicant is required to submit.
21 Ambient concentration levels shall take into account all projected
22 emissions in, or which may affect, such area from any major
23 emitting facility on which construction commenced prior to
24 January 6, 1975, but which has not begun operation by the date
25 of the baseline air quality concentration determination. Emissions
26 of sulfur oxides and particulate matter from any major emitting
27 facility on which construction commenced after January 6, 1975,
28 shall not be included in the baseline and shall be counted against
29 the maximum allowable increases in pollutant concentrations
30 established under this chapter.

31 42515. For the purpose of this chapter, the following
32 definitions apply:

33 (a) “Reasonable further progress” means the annual
34 incremental reductions in emissions of the relevant air pollutant as
35 required by this chapter or may reasonably be required by the
36 administrator, the state board, and a local district for the purpose
37 of ensuring attainment of the applicable national ambient air
38 quality standard by the applicable date.

39 (b) “Nonattainment area” means, for any air pollutant, an
40 area which is designated “nonattainment” with respect to that

1 *pollutant within the meaning of Section 7407(d) of Title 42 of the*
2 *United States Code.*

3 *(c) (1) "Lowest achievable emission rate" means for any*
4 *source, that rate of emissions which reflects either of the following:*

5 *(A) The most stringent emission limitation which is contained*
6 *in the implementation plan of the state for a class or category of*
7 *source, unless the owner or operator of the proposed source*
8 *demonstrates that the limitations are not achievable.*

9 *(B) The most stringent emission limitation which is achieved in*
10 *practice by the class or category of source, whichever is more*
11 *stringent.*

12 *(2) In no event shall the application of this term permit a*
13 *proposed new or modified source to emit any pollutant in excess*
14 *of the amount allowable under applicable new source standards of*
15 *performance.*

16 *(d) "Modifications" and "modified" mean the same as the*
17 *term "modification" as used in Section 42505.*

18 *42516. The plan provisions, including plan items, required to*
19 *be submitted under this chapter shall comply with each of the*
20 *following:*

21 *(a) The plan provisions shall provide for the implementation of*
22 *all reasonably available control measures as expeditiously as*
23 *practicable, including reductions in emissions from existing*
24 *sources in the area as may be obtained through the adoption, at a*
25 *minimum, of reasonably available control technology, and shall*
26 *provide for attainment of the national primary ambient air quality*
27 *standards.*

28 *(b) The plan provisions shall require reasonable further*
29 *progress.*

30 *(c) The plan provisions shall include a comprehensive,*
31 *accurate, current inventory of actual emissions from all sources of*
32 *the relevant pollutant or pollutants in the area, including periodic*
33 *revisions as the state board may determine necessary to assure that*
34 *the requirements of this chapter are met.*

35 *(d) The plan provisions shall expressly identify and quantify the*
36 *emissions, if any, of any pollutant or pollutants which will be*
37 *allowed, in accordance with Section 7503(a)(1)(B) of Title 42 of*
38 *the United States Code, from the construction and operation of*
39 *major new or modified stationary sources in each area. The plan*
40 *shall demonstrate to the satisfaction of the state board that the*

1 emissions quantified for this purpose will be consistent with the
2 achievement of reasonable further progress and will not interfere
3 with attainment of the applicable national ambient air quality
4 standard by the applicable attainment date.

5 (e) The plan provisions shall require permits for the
6 construction and operation of new or modified major stationary
7 sources anywhere in the nonattainment area, in accordance with
8 Section 7503 of Title 42 of the United States Code and Section
9 42518.

10 (f) The plan provisions shall include enforceable emission
11 limitations, and other control measures, means, or techniques
12 (including economic incentives such as fees, marketable permits,
13 and auctions of emission rights), as well as schedules and
14 timetables for compliance, as may be necessary or appropriate to
15 provide for attainment of the standard in an area by the applicable
16 attainment date specified in this chapter.

17 (g) The plan provisions shall also meet the applicable
18 provisions of Section 7410(a)(2) of Title 42 of the United States
19 Code.

20 (h) Upon application by any district, the state board may allow
21 the use of equivalent modeling, emission inventory, and planning
22 procedures, unless the state board determines that the proposed
23 techniques are, in the aggregate, less effective than the methods
24 specified by the administrator or the state board.

25 (i) The plan shall provide for the implementation of specific
26 measures to be undertaken if the area fails to make reasonable
27 further progress, or to attain the national primary ambient air
28 quality standard by the attainment date applicable under this
29 chapter. The measures shall be included in the plan revision as
30 contingency measures to take effect in any such case without
31 further action by the state board.

32 42517. (a) The permit program required by this chapter shall
33 provide that permits to construct and operate may be issued if all
34 of the following occurs:

35 (1) In accordance with this chapter and any regulations or
36 guidelines adopted by the state board pursuant to this chapter
37 setting forth the method for the determination of baseline
38 emissions, the permitting agency determines either of the
39 following:

1 (A) By the time the source is to commence operation, sufficient
2 offsetting emissions reductions have been obtained, so that total
3 allowable emissions from existing sources in the region, from new
4 or modified sources which are not major emitting facilities, and
5 from the proposed source will be sufficiently less than total
6 emissions from existing sources prior to the application for the
7 permit to construct or modify so as to represent, when considered
8 together with the plan provisions required under Section 7502 of
9 the United States Code, reasonable further progress.

10 (B) In the case of a new or modified major stationary source
11 which is located in a zone within the nonattainment area identified
12 by the administrator in consultation with the Secretary of Housing
13 and Urban Development, as a zone to which economic
14 development should be targeted, that emissions of the pollutant
15 resulting from the proposed new or modified major stationary
16 source will not cause or contribute to emissions levels that exceed
17 the allowance permitted for the pollutant for the area from new or
18 modified major stationary sources under Section 7502(c) of Title
19 42 of the United States Code.

20 (2) The proposed source is required to comply with the lowest
21 achievable emission rate.

22 (3) The owner or operator of the proposed new or modified
23 source has demonstrated that all major stationary sources owned
24 or operated by the person, or by any entity controlling, controlled
25 by, or under common control with the person, in the state are
26 subject to emission limitations and are in compliance, or on a
27 schedule for compliance, with all applicable emission limitations
28 and standards under this chapter.

29 (4) Neither the administrator or the state board has determined
30 that the applicable implementation plan is not being adequately
31 implemented for the nonattainment area in which the proposed
32 source is to be constructed or modified in accordance with the
33 requirements of this chapter.

34 (5) An analysis of alternative sites, sizes, production processes,
35 and environmental control techniques for the proposed source
36 demonstrates that benefits of the proposed source significantly
37 outweigh the environmental and social costs imposed as a result
38 of its location, construction, or modification.

1 (b) Any emission reductions required as a precondition of the
2 issuance of a permit under paragraph (1) of subdivision (a) shall
3 be federally enforceable before the permit may be issued.

4 (c) Any growth allowance included in an applicable
5 implementation plan to meet the requirements of Section
6 7502(b)(5) of Title 42 of the United States Code (as in effect
7 immediately before November 15, 1990) shall not be valid for use
8 in any area that received or receives a notice under Section
9 7410(a)(2)(H)(ii) of Title 42 of the United States Code (as in effect
10 immediately before November 15, 1990) or under Section
11 7410(k)(1) of Title 42 of the United States Code that its applicable
12 implementation plan containing the allowance is substantially
13 inadequate.

14 (d) (1) The owner or operator of a new or modified major
15 stationary source may comply with any offset requirement in effect
16 under this chapter for increased emissions of any air pollutant only
17 by obtaining emission reductions of the air pollutant from the same
18 source or other sources in the same nonattainment area, except
19 that the state board or district may allow the owner or operator of
20 a source to obtain emission reductions in another nonattainment
21 area if both the following criteria are met:

22 (A) The other area has an equal or higher nonattainment
23 classification than the area in which the source is located.

24 (B) Emissions from the other area contribute to a violation of
25 the national ambient air quality standard in the nonattainment
26 area in which the source is located. The emission reductions shall
27 be, by the time a new or modified source commences operation, in
28 effect and enforceable and shall assure that the total tonnage of
29 increased emissions of the air pollutant from the new or modified
30 source shall be offset by an equal or greater reduction, as
31 applicable, in the actual emissions of the air pollutant from the
32 same or other sources in the area.

33 (2) Emission reductions otherwise required by this chapter
34 shall not be creditable as emissions reductions for purposes of any
35 offset requirement. Incidental emission reductions which are not
36 otherwise required by this chapter shall be creditable as emission
37 reductions for such purposes if such emission reductions meet the
38 requirements of paragraph (1).

39 (e) The state board and districts shall provide that control
40 technology information from permits issued under this chapter

1 shall be promptly submitted to the administrator for purposes of
2 making the information available through the RACT/BACT/LAER
3 clearinghouse to other states and to the general public.

4 (f) The state board and districts shall allow a source to offset
5 by alternative or innovative means emission increases from rocket
6 engine and motor firing, and cleaning related to firing, at an
7 existing or modified major source that tests rocket engines or
8 motors under the following conditions:

9 (1) Any modification proposed is solely for the purpose of
10 expanding the testing of rocket engines or motors at an existing
11 source that was permitted to test those engines on November 15,
12 1990.

13 (2) The source demonstrates to the satisfaction of the state
14 board that it has used all reasonable means to obtain and utilize
15 offsets, as determined on an annual basis, for the emissions
16 increases beyond allowable levels, that all available offsets are
17 being used, and that sufficient offsets are not available to the
18 source.

19 (3) The source has obtained a written finding from the
20 Department of Defense, the Department of Transportation,
21 National Aeronautics and Space Administration or other
22 appropriate federal agency, that the testing of rocket motors or
23 engines at the facility is required for a program essential to the
24 national security.

25 (4) The source will comply with an alternative measure,
26 imposed by the permitting authority, designed to offset any
27 emission increases beyond permitted levels not directly offset by
28 the source. In lieu of imposing any alternative offset measures, the
29 permitting authority may impose an emissions fee to be paid to that
30 authority which shall be an amount no greater than 1.5 times the
31 average cost of stationary source control measures adopted in that
32 area during the previous three years. The permitting authority
33 shall utilize the fees in a manner that maximizes the emissions
34 reductions in that area.

35 42518. For any area designated as being in nonattainment of
36 the national ambient air quality standards as determined by the
37 administrator, the terms “major source” and “major stationary
38 source” shall include, in addition to the sources described
39 elsewhere in this chapter those sources defined as “major sources”
40 and “major stationary sources” in Section 7511(a) of Title 42 of

the United States Code, and the offset requirements applicable in those regions shall be as defined in Section 7511(a) of Title 42 of the United States Code, as summarized below:

Major Source Thresholds and Minimum Emission Offset Ratio Requirements for Ozone Nonattainment Areas			
OZONE NON-ATTAINMENT DESIGNATION	VOC (tons per year)	Nox (tons per year)	Minimum Emissions Offset Ratio Required
Extreme	10	10	1.5 to 1.0
Severe	25	25	1.3 to 1.0
Serious	50	50	1.2 to 1.0
Moderate	100	100	1.15 to 1.0
Moderate, in an ozone transport region	50	100	1.15 to 1.0
Marginal	100	100	1.1 to 1.0
Marginal in an ozone transport region	50	100	1.15 to 1.0
Attainment in an ozone transport region	50	100	1.15 to 1.0
All other nonattainment areas outside of an ozone transport region	100	100	1.0 to 1.0

42519 (a) Except as provided in subdivision (c), any person may commence a civil action on his or her own behalf against the following:

(1) Any person, including the state and any of its subdivisions, and any other governmental instrumentality or agency who is alleged to have violated, if there is evidence that the alleged violation, has been repeated, or to be in violation, of either of the following:

(A) An emission standard or limitation under this chapter.

(B) An order issued by the administrator, the state board, or a district with respect to an emission standard or limitation.

1 (2) *The state board or district where there is alleged a failure*
2 *of the state board or district to perform any act or duty under this*
3 *chapter which is not discretionary.*

4 (3) *Any person who proposes to construct or constructs any*
5 *new or modified major emitting facility without a permit required*
6 *under this chapter or who is alleged to have violated, if there is*
7 *evidence that the alleged violation has been repeated, or to be in*
8 *violation of any condition of such permit.*

9 (b) *An action pursuant to this section may be brought in any*
10 *court of competent jurisdiction to enforce such an emission*
11 *standard or limitation, or such an order, or to order the state board*
12 *or district to perform an act or duty, as the case may be, and to*
13 *apply any appropriate civil penalties. The state courts shall have*
14 *jurisdiction to compel agency action unreasonably delayed. In any*
15 *action for unreasonable delay, notice to the entities shall be*
16 *provided 180 days before commencing the action.*

17 (c) *No action may be commenced under paragraph (1) of*
18 *subdivision (a) as follows:*

19 (1) *Prior to 60 days after the plaintiff has given notice of the*
20 *violation to the district and the state board in which the violation*
21 *occurs and to any alleged violator of the standard, limitation, or*
22 *order.*

23 (2) *If the administrator, district, or state board has commenced*
24 *and is diligently prosecuting a civil action in a court of the United*
25 *States or the state to require compliance with the standard,*
26 *limitation, or order, but in any such action any person may*
27 *intervene as a matter of right.*

28 (3) *Under paragraph (2) of subdivision (a), prior to 60 days*
29 *after the plaintiff has given notice of such action to the*
30 *administrator, to the state board, and to the district affected, if any.*

31 (d) (1) *Any action respecting a violation by a stationary source*
32 *of an emission standard or limitation or an order respecting such*
33 *standard or limitation may be brought in any court of competent*
34 *jurisdiction.*

35 (2) *In any action under this section, the state board or relevant*
36 *district, if not a party, may intervene as a matter of right at any time*
37 *in the proceeding.*

38 (3) *Whenever any action is brought under this section, the*
39 *plaintiff shall serve a copy of the complaint on the Attorney*
40 *General and on the state board and relevant district, if any. No*

1 consent judgment or stipulated judgment shall be entered in an
2 action brought under this section in which the state board or local
3 district is not a party prior to 45 days following the receipt of a
4 copy of the proposed consent judgment or stipulated judgment by
5 the Attorney General, the state board, and the relevant district, if
6 any, during which time the state may submit its comments on the
7 proposed consent judgment to the court and parties or may
8 intervene as a matter of right.

9 (e) The court, in issuing any final order in any action brought
10 pursuant to subdivision (a), may award costs of litigation
11 (including reasonable attorney and expert witness fees) to any
12 party, whenever the court determines an award is appropriate. The
13 court may, if a temporary restraining order or preliminary
14 injunction is sought, require the filing of a bond or equivalent
15 security in accordance with the Code of Civil Procedure.

16 (f) Nothing in this section shall restrict any right which any
17 person or class of persons may have under any statute or common
18 law to seek enforcement of any emission standard or limitation or
19 to seek any other relief, including relief against the administrator
20 or a state agency. Nothing in this section shall be construed to
21 prohibit, exclude, or restrict any state, local, or interstate authority
22 from bringing any enforcement action or obtaining any judicial
23 remedy or sanction in any state or local court or bringing any
24 administrative enforcement action or obtaining any
25 administrative remedy or sanction in any state or local
26 administrative agency, department, or instrumentality, against the
27 United States, any department, agency, or instrumentality thereof,
28 or any officer, agent, or employee thereof under state or local law
29 respecting control and abatement of air pollution.

30 (g) For purposes of this section, the term "emission standard
31 or limitation under this chapter" means any of the following:

32 (1) A schedule or timetable of compliance, emission limitation,
33 standard of performance, or emission standard.

34 (2) A control or prohibition respecting a motor vehicle fuel or
35 fuel additive.

36 (3) Any condition or requirement of a permit required under
37 this chapter, or any condition or requirement under an applicable
38 implementation plan relating to transportation control measures,
39 air quality maintenance plans, vehicle inspection and
40 maintenance programs, or vapor recovery requirements, relating

1 to fuels and fuel additives, relating to visibility protection, any
2 condition or requirement relating to ozone protection, or any
3 requirement under Section 39659 or Article 4 (commencing with
4 Section 39665), or a program for which delegation and approval
5 was obtained pursuant to Section 7411 or 7412 of Title 42 of the
6 United States Code, without regard to whether such requirement
7 is expressed as an emission standard or otherwise.

8 (4) Any other standard, limitation, or schedule established
9 under any permit issued pursuant to subchapter V of the Clean Air
10 Act or under any applicable state implementation plan approved
11 by the administrator or the state board, any permit term or
12 condition, and any requirement to obtain a permit as a condition
13 of operations which is in effect under this chapter or under an
14 applicable implementation plan.

15 (h) (1) Penalties received under this section shall be allocated
16 as set forth in Sections 42405 and 42405.1.

17 (2) Notwithstanding paragraph (1), the court in any action
18 under this section to apply civil penalties shall have discretion to
19 order that the civil penalties, in lieu of being deposited in the fund
20 referred to in paragraph (1), be used in beneficial mitigation
21 projects which are consistent with this chapter and enhance the
22 public health or the environment. The court shall obtain the view
23 of the state board and relevant district, if any, in exercising its
24 discretion and selecting any projects. The amount of any payment
25 in any action shall not exceed one hundred thousand dollars
26 (\$100,000).

27 SEC. 2. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.

36 SEC. 3. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 a local agency or school district has the authority to levy service
39 charges, fees, or assessments sufficient to pay for the program or

- 1 *level of service mandated by this act, within the meaning of Section*
- 2 *17556 of the Government Code.*

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